PUBLIC HEALTH COUNCIL

Meeting of the Public Health Council, Tuesday, April 27, 1999, at 10:00 a.m., Massachusetts Department of Public Health, Henry I. Bowditch Room, 2nd Floor, 250 Washington Street, Boston, Massachusetts. Present were: Dr. Howard Koh (Chairman), Ms. Janet Slemenda, Mr. Albert Sherman, Mr. Joseph Sneider, Dr. Clifford Askinazi, Mr. Manthala George, Jr., Mr. James Phelps, Mr. Bertram Yaffe, and Dr. Thomas Sterne. Also in attendance was Attorney Donna Levin, General Counsel.

Chairman Koh announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Mass. General Laws, Chapter 30A, Section 11A ½. Chairman Koh introduced new Council Member Dr. Thomas C. Sterne. Dr. Koh said, "Dr. Sterne is an internist, and a member of the Chelsea Health Center. He is very involved in community health matters, and we welcome him to the Council."

The following members of the staff appeared before Council to discuss and advise on matters pertaining to their particular interests: Dr. Alfred DeMaria, Jr., Assistant Commissioner, Bureau of Communicable Disease Control; Dr. Paul Etkind, Director, Sexually Transmitted Disease Prevention Program; Ms. Maureen McHue, Deputy Director, Healthy Start Unit; and Dr. Deborah Klein-Walker, Assistant Commissioner, Bureau of Family and Community Health; Dr. Paul Dreyer, Director, Division of Health Care Quality, Ms. Joyce James, Director, Ms. Holly Phelps, Consulting Analyst, and Mr. Jere Page, Senior Analyst, Determination of Need Program; and Attorney Carl Rosenfield, Deputy General Counsel.

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Personnel Actions:

In a letter dated April 5, 1999, Howard K. Koh, Commissioner, Department of Public Health, recommended the approval of the appointment of Dorothy Tuttle to Program Manager Specialist IX, (Director of Nursing for Tewksbury Hospital). Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Commissioner of Public Health, under the authority of Massachusetts General Laws, Chapter 17, Section 6, the appointment of Dorothy Tuttle to Director of Nursing for Tewksbury Hospital be approved.

In a letter dated April 8, 1999, Katherine Domoto, M.D., Associate Director for Medicine, Tewksbury Hospital, Tewksbury, recommended approval of the appointments and reappointments to the active and consultant medical staff of Tewksbury Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the the Associate Director for Medicine of Tewksbury Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following appointments and reappointments to the medical staff of Tewksbury Hospital be approved for a period of two years beginning April 1, 1999 to April 1, 2001:

REAPPOINTMENTS:	**MASS. LICENSE:**	**STATUS:**
Mark Albanese, M.D.	71493	Active Staff Psychiatry
Robert Karr, M.D.	73911	Active Staff Psychiatry
Edward Khantzian, M.D.	28153	Active Staff Psychiatry

APPOINTMENTS:	**MASS. LICENSE #:**	**SPECIALTY:**
Michael John, D.M.D.	13404	Dentistry
Pamela Sheridan, M.D.	24478	Neurology/Psychopharmacology

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In a letter dated April 9, 1999, Blake Molleur, Executive Director, Western Massachusetts Hospital, recommended approval of appointments to the consultant medical staff of Western Massachusetts Hospital, Westfield. Supporting documentation of the appointees' qualifications accompanied the recommendations. After consideration, upon motion made and duly seconded, it was voted unanimously: That, in accordance with the recommendation of the Executive Director, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following appointments to the various medical staffs of Western Massachusetts Hospital, be approved:

APPOINTMENTS:	**RESPONSIBILITY:**	**MED. LICENSE NO.:**
T. Raman, M.D.	General Medicine/Pulmonary	#34764
William Bontempi, DMD, M.D.	General Dentistry	#19611

STAFF PRESENTATIONS:

"1998 ANNUAL SEXUALLY TRANSMITTED DISEASE REPORT (STDs)" by Dr. Alfred DeMaria, Assistant Commissioner and Mr. Paul Etkind, Director, Division of STD Prevention, Bureau of Communicable Disease Control:

Dr. Alfred DeMaria, Assistant Commissioner, Bureau of Communicable Disease Control, accompanied by Dr. Paul Etkind, Director of STD Division, began, "…The news is still generally good. We are below national Healthy People 2000 rates of disease, in terms of syphilis, gonorrhea, and chlamydia, but the news is not good enough. We could do much better, and get these rates lower with intensified programs. We have seen consequences of complacency, subtle changes in trends, though not dramatic. It brings out the point that prevention depends on a concerted effort to prevent disease…"

Dr. Paul Etkind said in part, "…You can see the steady decline of infectious syphilis that we've had since 1990. We had approximately a twenty percent decline from 1997. And there were only one hundred and fifty cases last year reported for Massachusetts. It is getting to the point now where this same phenomenon is being seen in many other areas of the country. There is actually serious discussion of the potential for eliminating indigenous transmission of syphilis in the United States…With gonorrhea you see a decline from the 1970s. We did have a nine percent increase in gonorrhea in 1998, compared to 1997. In context, it is still among the lowest that has ever been reported in Massachusetts since reporting began in 1918. With chlamydia, you see the sharp rise which is because reporting was mandated in 1985, and with any new effort at surveillance it takes a few years before you have a standard reporting system in place. We have had declines since 1990. However, since 1996 we have been increasing. In July of 1996 we replaced the test at the State lab that we had been using. We have adopted the latest generation of testing. It is using DNA amplification. It is much more sensitive. What we have here is a combination of a more sensitive test with expanded screening services. We have partnered with a number of family planning agencies and have increased the amount of screening that is being done here in Massachusetts among high risk women. You are seeing the result. This is not an outbreak of chlamydia. What we are seeing here is a truer picture of the chlamydia that exists, but was not being detected, given that so many of the infections are without symptoms…when you look at the race, ethnicity, the disparities between white and non-white become very clear. This is true with syphilis, with gonorrhea , and finally with chlamydia. So it is quite obvious toward which populations our attention needs to be reinforced, and augmented, in order to have an impact on the transmission of these diseases here in Massachusetts . And finally, when you look age, syphilis is interesting, because it is not as common among the teens and young adolescents. We see syphilis more often in the twenty- five to thirty-five age group..."

"ENVIRONMENTAL TOBACCO SMOKE" by James Hyde, PhD., Tufts University School of Medicine:

Dr. James Hyde, Ph .D., Tufts University School of Medicine, said in part, "…I want to present the essential findings of a task force report on environmental tobacco smoke (ETS)…There is overwhelming evidence that environmental tobacco smoke is bad for you. The weight of the evidence is clear and overwhelming. Study after study, report after report from the national Research Council, from the U.S. Environmental Protection Agency that did this study shows the same thing. Environmental tobacco smoke causes disease, and causes illness, and that people who are exposed to it have more illness than people who are not…ETS is associated with a broad range of illnesses and conditions, not just pulmonary disease. Most of the time, people think in terms of asthma, and pulmonary disease. In fact, the EPA report focused largely on those illnesses and disease. But in fact, subsequent studies, and other studies have shown that there is a broad range of effects from exposure to environmental tobacco smoke; from low birth weight, to sudden infant death syndrome, to middle ear infections, to coronary heart disease now...In excess of a thousand deaths a year we would attribute to ETS exposure, and in terms of morbidity, twenty-seven thousand episodes of illness...ETS exposure is culmulative over time. Over the lifetime of the individual exposed, there are concomitant, and cascading effects that occur as the result of this exposure…The exposure itself affects multiple organ systems… Children are vulnerable to exposure from environmental tobacco smoke…"

Dr. Hyde continued, " There are a hundred and forty-two cities and towns that currently restrict smoking through ordinances…About two-thirds of the population of Massachusetts is covered by local ordinances now in restaurants that restrict exposure. We have reduced average exposure to ETS, in the workplace; and that has been quite dramatic…Seventy-eight percent of the three thousand largest employers in the Commonwealth of Massachusetts have either complete bans on smoking, or have complete bans on smoking in the workplace. That covers a lot of workers. An additional twenty percent have designated areas for smoking. From 1992 to 1997, a hundred and sixteen cities and towns enacted smoking bans in municipal buildings…One of the things that we need to continue to do is awareness. I am happy to say that the Department is doing that through its media campaign. It has a new initiative in which it is supporting education to families about the importance of environmental tobacco smoke exposure. The second thing is enforcement. We need to make sure that we do a thorough job of enforcing the current regulations and ordinances that are there. A third thing that we suggest is that you take a look at the possibility of using the State sanitary code as a mechanism to protect patrons in those restaurants and other establishments that are not currently covered by local ordinances. A second recommendation we would like to make is that the State adopt a 'do as we do' as well as 'do as we say' policy. There are instances in which the State acts in foster homes, and other kinds of residential sites for programs that the State runs. As an example, we would cite the Department of Mental Health as an example of an agency that has policies with respect to ETS exposure for sites where it runs homes and residences for clients of the State. And finally, we would ask the Council and the Department to consider what should be done to protect the various workers that have the dual problem of going to work in settings where they are exposed to environmental tobacco smoke for the purposes of keeping a job and at the same time, are not offered the benefits of having health insurance. These people are at extraordinary risk…We think at a minimum that we ought to consider adjusting health insurance rates in such a way for things like fire, for workmen's compensation, and for health insurance in such a way that it reflects the added adverse effects of environmental tobacco smoke exposure. And we ask also that you might want to consider requiring that businessess that do not afford protections of health insurance until we have some kind of universal health coverage, provide insurance coverage for employees…In conclusion, the task force was impressed by the range of things that have been accomplished in the Commonwealth. Since the passage of Question One in 1992, great progress has been made. We continue to be impressed by the magnitude and importance of this exposure as a source of premature morbidity and mortality in the Commonwealth…"

Discussion followed in which Council Member Yaffe made the motion that the Council and the Department come back to the Public Health Council in ninety days with the legal and administrative implications of Dr. Hyde's request. After consideration, upon motion made and duly seconded, it was voted unanimously that the Public Health Council and Department of Public Health return in 90 days for further discussion.

REGULATIONS:

REQUEST FOR PROMULGATION OF AMENDMENTS TO THE HEALTHY START REGULATIONS – 105 CMR 230.000:

Ms. Maureen McHugh, Deputy Director, Healthy Start Unit, accompanied by Dr. Deborah Klein-Walker, Assistant Commissioner, Bureau of Family and Community Health, introduced the Request for Promulgation of Amendments to the Healthy Start Regulations. Ms. McHugh said, "On January 29th we held a public hearing to solicit information, and support, or negative concerns on amending Healthy Start, and increasing the guidelines. We received all positive responses. The parties that responded by letter were Children's Hospital, the American Academy of Pediatrics, the Massachusetts Law Reform Institute, the Massachusetts League of Community Health Centers, and the Massachusetts Nurses Association. All cited their support of the fact that Healthy Start has provided a major safety net for prenatal care for women who do not have insurance. All were very supportive of the increase in the guidelines. There were no negative information received at all. We would ask your permission to amend the regulations and increase the guidelines."

The changes are as follows:

- Eligibility 230.200 – previously read **"Income up to 200%"**; will now read **"Income up to 225%."** This change is in response to the MassHealth expansion, which now covers pregnant women up to 200% of the Federal Poverty Level (FPL). Prior to the expanded coverage, MassHealth covered up to 185% of the FPL and Healthy Start covered to 200% of the FPL. Healthy Start will now cover women up to 225% of the FPL.

- Reimbursement of Service 230.400 – previously read "All claims for services rendered must be submitted by the provider to the Healthy Start Program within **120 days** of providing the service," will now read "All claims for services rendered must be submitted by the provider to the Healthy Start Program within **90 days** of providing the service." This change establishes the same claims submission deadline as MassHealth and all other health insurance providers.

- Application Process 230.100 – (a) previously read "If working for an employer, photocopies of **four most recent pay stubs"**; will now read "If working for an employer, photocopies of **two recent pay stubs."** (b) Previously read "If pay stubs are unavailable, a letter from employer on company letterhead…stating gross earning for the **last four weeks"**; will now read **"last two weeks."**

A public hearing was held on January 29, 1999 and no concerns were submitted by any parties at that hearing or otherwise. Letters of support of these changes have been received from Children's Hospital, American Academy of Pediatrics, Massachusetts Law Reform Institute, Massachusetts League of Community Health Centers, and Massachusetts Nurses Association, primarily noting the importance of increasing the income guidelines to 225% of FPL to maintain the safety net that Healthy Start has historically provided for low-income pregnant women."

After consideration, upon motion made and duly seconded, it was voted: (Dr. Koh, Dr. Askinazi, Mr. George, Jr., Mr. Phelps, Mr. Sherman, Ms. Slemenda, Dr. Sterne, and Mr. Yaffe in favor; Mr. Sneider not present, therefore did not vote) to **approve the Request for Promulgation of Amendments to Healthy Start Regulations – 105 CMR 230.000.** A copy is attached to and made a part of this record as **Exhibit Number 14,644.**

REQUEST FOR EMERGENCY PROMULGATION OF AMENDMENTS TO THE OPERATION, APPROVAL AND LICENSING OF CLINICAL LABORATORIES 105 CMR 180.000 GOVERNING THE APPROVAL OF SPECIAL PROJECTS:

Attorney Carl Rosenfield, Deputy General Counsel, Department of Public Health, said in part, "…We are here today to ask the Council's approval for the emergency promulgation of an amendment to the Department's regulations regarding the licensure of clinical laboratories. The amendment would allow the designation, on a pilot basis, of certain special projects proposing innovative and beneficial ways of delivering services. For some time, a number of the Department's licensing regulations, including those governing the licensing of hospitals, long term care facilities, clinics, hospices, etc., have had similar provisions. The fact that the clinical laboratory regulations have not had corresponding provisions comes to light as a result of a proposal we received from Dr. William Castelli of the Framingham Cardiovascular Institute. That proposal suggests the testing, doing lipid studies of high school age students, with appropriate follow-up counseling, information about lifestyle changes, all of which could lead to the prevention of cardiovascular disease later on down the line. In order to accommodate this, and other kinds of requests, we are proposing the promulgation of a regulation that is identical to that in other licensing regulations...The emergency adoption of the proposed amendment is necessary to assure that the Institute is able to implement its program during the present school year and begin the process of educating teenagers about the long term health risks and potential health consequences that result from poor dietary habits, lack of exercise and cigarette smoking. Staff will hold a public hearing within the 90 day period required by M.G.L. C.30a, S2 and will return to the Council as soon as possible thereafter for final action on the amendment."

105 CMR 180.000 is amended by adding the following new section:

180.031: Special Projects

The Department will consider proposals for special projects for the innovative delivery of clinical laboratory services. No such plan shall be implemented without prior written approval of the Department. Such plans shall be implemented only on an experimental basis and subject to renewal of the approval by the Department at such periods as the Department shall fix.

After consideration, upon motion made and duly seconded, it was voted: (Dr. Koh, Dr. Askinazi, Mr. George, Jr., Mr. Phelps, Ms. Slemenda, Dr. Sterne, and Mr.Yaffe in favor; Mr. Sherman and Mr. Sneider were not present to vote) to **approve the Request for Emergency Promulgation of Amendments to the Operation, Approval and Licensing of Clinical Laboratories 105 CMR 180.000 Governing the Approval of Special Projects**; that a copy of the emergency regulations be forwarded to the Secretary of the Commonwealth; and that a copy of the emergency regulations be attached to and made a part of this record as **Exhibit Number 14,645.** After the public hearing, the emergency regulations return to Council for final approval.

REQUEST FOR EMERGENCY PROMULGATION OF AMENDMENTS TO DETERMINATION OF NEED REGULATIONS 105 CMR 100.000 GOVERNING DON AUTHORIZATION FOR CONVALESCENT, NURSING AND REST HOME PROJECTS:

Ms. Joyce James, Director, Determination of Need Program, said in part, "The purpose of this memorandum is to request the Public Health Council's approval for the promulgation of an emergency amendment to Determination of Need Regulations 105 CMR 100.000. Under this amendment the authorization period for determinations for any convalescent, nursing and rest home projects, if made under M.G.L. C.111.S.25c and granted prior to June 1992, shall expire by January 1, 2000 unless the provider has demonstrated substantial and continuing progress toward project completion or the authorization period is extended by the Department for good cause shown. On March 28, 1995, the Department approved an amendment to the Determination of Need Regulations extending the authorization period to January 1, 2000, for determinations for any convalescent, nursing and rest home projects granted prior to June 1992. The amended regulation required facilities to be licensed by January 1, 2000 and prohibited extensions

beyond that date. At the time the amendment was adopted, Department staff believed that the new expiration date would allow sufficient time for the implementation of the unimplemented projects. In the intervening time, holders of these BANYLs have encountered difficulties in securing and maintaining capital financing and resolving capital costs reimbursement issues. These difficulties have occasioned delays in the commencement of certain projects and called into question the ability of the holders to complete the projects and have the facilities licensed by the January 1, 2000 deadline. The proposed amendment would retain the January 1, 2000 expiration date but eliminate the requirement that facilities be licensed by that date. The effect of the change would be to allow the continuation of projects that were commenced prior to January 1, 2000 where substantial and continuing progress toward completion had been made. The emergency adoption of the proposed amendment is necessary to assure that projects that have been commenced can receive continued financing to avoid a situation where a facility is in the process of being built but will be unable to retain continued financing for completion due to the January 1, 2000 licensing requirement currently in effect. Staff will hold a public hearing within the required ninety (90) period required by M.G.L. c.30A, S.2 and will return to the Council as soon as possible thereafter with the proposed final regulation for Council's adoption."

After consideration, upon motion made and duly seconded, it was voted: Dr. Koh, Dr. Askinazi, Mr. George, Jr., Mr. Phelps, Ms. Slemenda, Mr. Sneider, Dr. Sterne, and Mr. Yaffe in favor; (Mr. Sherman abstaining) to **approve Emergency Promulgation of Amendments to Determination of Need Regulations 105 CMR 100.000 Governing DoN Authorization for Convalescent, Nursing and Rest Home Projects**; that a copy of the emergency regulations be forwarded to the Secretary of the Commonwealth and that a copy of the emergency regulations be attached to and made a part of this record as **Exhibit Number 14,646**. After the public hearing, the emergency regulations return to Council for final approval.

DETERMINATION OF NEED:

ALTERNATE PROCESS FOR TRANSFER OF OWNERSHIP APPLICATION:

PROJECT APPLICATION NO. 2-4872 OF ARC WORCESTER CENTER, L.P. - REQUEST FOR TRANSFER OF OWNERSHIP AND ORIGINAL LICENSURE OF WORCESTER SURGICAL CENTER, INC. RESULTING FROM ACQUISITION OF SUBSTANTIALLY ALL OF ITS ASSETS BY ARC WORCESTER CENTER, L.P.:

Ms. Holly Phelps, Consulting Analyst, said, "The Applicant, ARC Worcester Center, L.P., is seeking a Determination of Need for transfer of ownership and original licensure of Worcester Surgical Center, Inc. resulting from the acquisition of substantially all of its assets by ARC Worcester L.P. (ARCW). The general partner of ARCW is Ambulatory Resource Centres of Massachusetts, Inc.. ARCW will be the sole manager and the licensee of the Center. No change in services and no capital expenditure are contemplated for this transfer of ownership. Based upon a review of the application as submitted and clarification of issues by the Applicant, Staff finds that the application satisfies the requirements for the Alternate Process for Change of Ownership found in 105 CMR 100.600 et seq.. Staff also finds that the Applicant satisfies the standards applied under 100.602 as follows:

Individuals residing in the ambulatory surgery center's health systems area or primary service area compromise a majority of the individuals responsible for decisions concerning:

- approval of borrowings in excess of $500,000;
- additions or conversions which constitute substantial change in services;
- approval of capital and operating budgets; and
- approval of the filing of an application for determination of need.

The Division of Medical Assistance (DMA) did not submit any comments on this application. No comments were submitted on the application. The Department has determined that the Applicant, a freestanding ambulatory surgery center, is not subject to a condition of approval to maintain or increase the percentage of gross patient service revenue allocated to free care as defined at M.G.L. c.118G or its

successor statute covering uncompensated care, as existed prior to the transfer of ownership. The Division of Health Care Quality has confirmed that the Applicant is a licensed facility. Based upon the above findings, Staff recommends approval with condition of Project No. 2-4872 for transfer of ownership and original licensure of Worcester Surgical Center resulting from the acquisition of substantially all of its assets by ARC Worcester Center, L.P. (ARCW). The general partner of ARCW is Ambulatory Resource Centers of Massachusetts, Inc. ARCW will be the sole manager and licensee of the Center. Failure of the Applicant to comply with the condition may result in Department sanctions, including possible fines and/or revocation of the DoN."

After consideration, upon motion made and duly seconded, it was voted (unanimously): to **approve Project Application No. 2-4872 of ARC Worcester Center, L.P. – Request for transfer of ownership and original licensure of Worcester Surgical Center, Inc.** resulting from acquisition of substantially all of its assets by ARC Worcester Center, L.P.; a copy is attached to and made a part of this record as **Exhibit Number 14,647**. This approval is subject to the following condition:

1. The Department's approval shall become final at the close of business on April 27, 1999, provided that, if comments in opposition to the Department's approval or a request for a hearing, pursuant to 105 CMR 100.603 (B), are received prior to the close of business on April 20, 1999, the application shall be considered at a subsequent meeting of the Council."

CATEGORY 2 APPLICATIONS:

DON PROJECT NO. 5-3897 OF MORTON HOSPITAL AND MEDICAL CENTER, GOOD SAMARITAN HOSPITAL AND SAINT ANNE'S HOSPITAL TO ESTABLISH A RADIATON THERAPY SERVICE WITH ACQUISITION OF A 6-18 MV LINEAR ACCELERATOR TO BE LOCATED ON THE CAMPUS OF MORTON HOSPITAL AND MEDICAL CENTER IN TAUNTON, MA:

Council Member Manthala George, Jr. stated for the record "…I am no longer a member of Brockton Hospital Board and during my tenure as a trustee, I did not receive any compensation of any kind from the hospital for any reason. I sent a letter to the Governor bringing that relationship to his attention. Because of my prior service on the Brockton Board I realize someone may believe that an appearance of conflict of interest might exist. And accordingly, pursuant to Mass. General Laws Chapter 268A section B3, I am disclosing the circumstances of my former relationship to you."

Dr. Paul Dreyer, Director, Division of Health Care Quality, said in part, "At its January 26, 1999 meeting, Council voted to postpone consideration of the above referenced project, Determination of Need (DoN) application Project No. 5-3897 filed by Morton Hospital & Medical Center, Good Samaritan Hospital and Saint Anne's Hospital (Cluster) to establish radiation therapy services on Morton's campus in Taunton and previously approved DoN Project No. 5-2782 filed by Brockton Hospital for transfer of site of the licensed radiation therapy unit to Taunton. At that meeting, Council directed Department Staff to use its good offices to mediate between the Cluster Hospitals…I give this history by way of saying that there is a long background here and these projects have been around for a while…"

For the record, William C. Galvin, State Representative, 6th Norfolk District, has submitted a letter dated April 26, 1999, in support of the two proposals to provide radiation therapy in the Taunton community. "…This service is extremely important to the future of the Good Samaritan Medical Center. It is the belief of the Good Samaritan Medical Center that approval of both applications will allow the free market to prevail…" Marc R. Pacheco, State Senator, 1st Plymouth and Bristol District, submitted a letter dated April 23, 1999, strongly supporting the application of the cluster of hospitals. "…The cluster is representative of the major providers of healthcare for the Greater Taunton Area, and the Greater Taunton Area is distinct from the area served by Brockton Hospital for healthcare. The application addresses the needs that my constituents have said is an access problem for them when they, or family members, are the sickest…" Thomas C. Norton, State Senator, First Bristol District, submitted a letter dated April 27, 1999, in support of St. Anne's Hospital's Determination of Need application. "…It makes sense for Morton Hospital to be

able to allow this high-quality pattern of care to continue at a new center located right in Taunton. Patients would enjoy the same clinical synergies and not have to travel to Fall River…" State Representative John A. Lepper, State Representative Philip Travis and State Representative Barbara C. Hyland submitted a letter reiterating their support for Sturdy Hospital being included. "…As we have stated in the past, we believe that a regional approach to the delivery of these services to the area makes excellent sense and should include Sturdy…At a minimum we would hope that the Council would mandate that all hospitals involved utilize the services of a professional mediator to establish a regional service." A summary, letters of support, and transcript are attached to and made a part of this record as **Exhibit Number 14,648.**

Mr. Jere Page, Senior Analyst, Determination of Need Program said in part, "Good Samaritan Medical Center, Morton Hospital and Medical Center, and St. Anne's Hospital propose to establish a megavoltage radiation therapy service through purchase of a dual energy (6-18 MeV) linear accelerator and construction of a new facility on the campus of Morton Hospital to house the unit. Under the terms of the Memorandum of Understanding (MOU) signed by the three applicants, and included in the application, a free-standing radiation therapy clinic will be established under a joint legal entity composed of the three Hospitals…St. Anne's currently operates radiation therapy services with three linear accelerator units: two in Fall River and one in Dartmouth, which is jointly owned with St. Luke's Hospital of New Bedford. The Joint Center for Radiation Therapy in Boston will be the tertiary affiliate. Good Samaritan Medical Center (GSMC) is a 231-bed community hospital with campuses in Brockton and Stoughton. Morton Hospital and Medical Center (MHMC) is a 163-bed community hospital located in Taunton. St. Anne's Hospital (SAH) is a 139-bed community hospital located in Fall River. On April 15, 1994, Salem Hospital/North Shore Cancer Center (Project No. 6-3898), Atlanticare/North Shore Radiation Therapy Partnership (Project No. 6-3896), and Morton, Good Samaritan, and St. Anne's Hospitals (Project No. 5-3897) filed applications to add radiation therapy capacity through expansion of existing services or development of a new service. These three applications were subsequently declared comparable by the DoN Program Director on June 2, 1994. On December 19, 1994, Atlanticare/North Shore Radiation Therapy Partnership filed an amendment to add Anna Jacques Hospital as a member of the Partnership, which was accepted by the Program Director on January 19, 1995. On April 4, 1996, the ownership of Salem Hospital was transferred to Partners HealthCare System (Project No. 6-3914). Because the ownership of Salem Hospital changed more than 50%, the DoN Regulations (CMR 100.350) stipulate that the Salem/North Shore Cancer Center application be resubmitted by the new owners, Partners/North Shore Medical Center, on the appropriate filing date, July 1, 1998. Partners/North Shore Medical Center chose not to resubmit the application. Atlanticare/North Shore Radiation Therapy Partnership has lost the right to have its application considered as comparable with the Morton, Good Samaritan, and St. Anne's application, in accordance with the procedures set forth in DoN Regulations (CMR 100.353), which stipulate that an applicant that is allowed to amend an application which has been designated comparable to one or more other applications loses the right to have its application considered as comparable with other applications."

Mr. Thomas Porter, President of Morton Hospital, was accompanied by Frank Larkin, President of Good Samaritan Medical Center in Brockton, Mike Metzler, President of St. Anne's Hospital in Fall River, and Jane Freeman, Director of Planning at Morton Hospital. Mr. Porter said in part, "…We are here today to meet with you concerning a cluster application for radiation therapy in Central Southeastern Massachusetts. As you are aware, these three institutions have formed a cluster, in accordance with the radiation therapy guidelines promulgated by the Department of Public Health to provide radiation therapy for patients in the cities and towns described in the application…When we were here in January, we told you that, one, this application is the culmination of planning for increased access in this area, which has spanned many years. Secondly, we said the cluster proposal reflects the dynamics of the market, and is a well thought out proposal which addresses the guidelines. And finally, we said it would increase access for this important service. The increased access will be provided by the three institutions who are the most logical partners for a radiation therapy cluster in the proposed geography. Morton and Good Sam are the primary institutional health care providers for this geography. In fact, physicians whose major affiliation is Good Samaritan have offices located in towns which are undeniably part of the Greater Taunton area. St. Anne's is the leading provider of choice for radiation therapy in the proposed geography. In short, this proposal is the best solution to increase access for the geography identified."

Mr. Norman Goodman, President, Brockton Hospital, said in part, "…At your January meeting you asked us to get together with the Morton cluster and use our collective vision to resolve the competitive duplication of resources presented by our two applications to operate radiation therapy units in the city of Taunton. We tried to look beyond Taunton and focus on the entire region. We saw that forty per cent of the volume projected in the clusters applications came from four communities in the primary service area of Sturdy, and Brockton. Since the cluster was dependent on our volume, it seemed natural that both Sturdy and Brockton should be part of the venture…The idea of a five hospital joint venture was put forth. It was described as a blockbuster idea, and I strongly endorsed it. We were not trying to control the venture. The three cluster hospitals would still be the majority members of the venture. Unfortunately, the cluster hospitals reacted coolly to this suggestion. They said that Brockton could join the cluster, but not Sturdy. And Brockton could join only if it gave up our thirty year tertiary relationship with B.U. Only if we closed down our second unit, and limited our planning flexibility, with respect to our first unit. And only if we gave up our right to manage the unit in favor of St. Anne's Hospital. Despite our best efforts, we simply could not get any further with Morton than its first offer. We have repeatedly suggested that we all engage an experienced professional mediator who could help us to bridge our differences, and explore alternatives…We feel we need a fresh perspective. We fully understand the staff's limitations. They have had to look at our two applications as non-competing, non-comparable applications. One for a new DoN, the other for a transfer of site. As members of the Public Health Council, you have the opportunity to look at this matter differently, more broadly; and we ask that you do so. We believe there is still room for further negotiation and compromise…"

Attorney Ron Schram, Ropes and Gray, representing the Brockton TenTaxpayer Group, said in part, "…I would like to emphasize two or our many objections to the staff's recommendation for approval of the Morton Hospital application. First, the staff in our view, used the wrong section of the Department's radiation therapy guidelines to evaluate this application. The application proposes that St. Anne's Hospital manage the unit in Taunton. St. Anne's, as you have heard, operates three existing radiation therapy units. Thus, this application must be evaluated by reference to factor two, measure five of the guidelines, which is applicable to additional units, and not factor two, measure two, which is the section that the staff has used. That section applies only to applications to establish a new radiation therapy service. What is proposed here is not a new service at all. Instead, it is an extension of the existing St. Anne's service. This is clear, not only from the cluster's nonnegotiable position that the unit must be managed by St. Anne's but by the cluster's further insistence that the unit must be supported by a tertiary backup agreement with the Joint Center for Radiation Therapy, because St. Anne's existing unit is supported by the Joint Center. This is a critical fact in the evaluation, because measure five, applicable to additional units, requires a projection of three hundred additional new patients annually; whereas measure two, which the staff used, only requires two hundred and fifty new patients. The staff's projections, which we question for other reasons, anticipate more than two hundred and fifty new patients, but not more than the required three hundred new patients.

Attorney Shram continued, "The second point I'd like to discuss with you is the staff's conclusion that there is a need for a unit in Taunton based on the assumption that the physician members of the Bridgewater Park Medical Associates Group would redirect their radiation therapy patients from the six towns of Mansfield, Norton, Easton, Bridgewater, East Bridgewater, and West Bridgewater away from Brockton Hospital, to which they have historically been referred, and instead to the cluster's unit in Taunton…Whether Brockton Hospital gets more than fifty percent of all of the patients who receive radiation therapy from those towns is totally irrelevant. The key fact is: where do those patients controlled by those physicians go at the present time? And the facts are clear that virtually all of those patients now receive their radiation therapy services at Brockton Hospital. The redirection of those patients is wholly improper. Four of these six towns are in the primary service area of Brockton Hospital. None of the six towns are in the primary service area of Morton Hospital. In addition, all six towns are within a travel time of thirty minutes to Brockton Hospital; thus confirming that there is no lack of access for patients from these towns…Most important of all, the Department has no legal authority to reassign radiation therapy volume that it has already assigned to one hospital as a basis for granting it a DoN to purchase a megavoltage unit. The Staff's recommendation, in effect, takes away Brockton Hospital's approved DoN…"

Next, State Senator Mark Pacheco, spoke on behalf of the Morton cluster application. He said in part, "I believe the application sets forth the conditions that you require. That of making sure that there is increased access to the types of services that they wish to provide, and quality services in Southeastern Massachusetts…There is absolutely no reason in the world based upon the work that your staff has done, based upon the regulations, that the Morton cluster should not be approved. Not postponed again…I would urge this Council to approve the Taunton cluster application…"

After consideration, upon motion made and duly seconded, it was voted: (Dr. Koh, Ms. Slemenda, Mr. Phelps, Mr. Yaffe, Dr. Askinazi in favor; Mr. George, Jr. not in favor; and Mr. Sneider, Mr. Sherman, and Dr. Sterne abstaining) to **approve Project Application Number 5-3897 of Morton Hospital and Medical Center, Good Samaritan Hospital and Saint Anne's Hospital to establish a radiation therapy service with acquisition of a 6-18 MV Linear Accelerator to be located on the campus of Morton Hospital and Medical Center in Taunton, Ma**, (summary of which is attached to and made a part of this record as **Exhibit Number 14,649,** based on staff findings, with a maximum capital expenditure of $3,882,500 (April 1994 dollars) and first year incremental operating costs of $1,224,048 dollars (April 1994 dollars). As approved, the application provides for the establishment of a megavoltage radiation therapy service on the campus of Morton Hospital in Taunton.

This Determination if subject to the following conditions:

1. The applicant shall accept the maximum capital expenditure of $3,882,500 (April 1994 dollars) as the final cost figure except for those increases allowed pursuant to 105 CMR 100.751 and 752.

2. Morton Hospital and Medical Center shall contribute 100% in equity to the final approved MCE.

3. The applicant shall not consider ability to pay or insurance status in selecting or scheduling patients for radiation therapy services.

4. Prior to initiation of the service, the applicant shall submit an affiliation agreement with a tertiary care hospital in compliance with the Guidelines.

5. Morton Hospital shall provide the following elements of a professional medical interpreter service:

    a. A Director of Interpreter Services. The current Director of Patient Relations shall also be the official Director of Interpreter Services. This last title must permanently remain even if the Hospital decide to give new appellations to the position.

    b. A system for monitoring the primary language of outpatients and inpatients of the Hospital and periodically compiling these statistics for the purpose of assessing the languages accommodated and evaluating the interpreter program.

    c. A system for tracking requests for interpreter services and Hospital's responses to these requests.

    d. Provision of interpreter services by well-trained interpreters for the non-English languages spoken in the service area on an on-call basis for 24 hours a day for inpatient and outpatient services, including ancillary services such as laboratory and x-ray.

    e. Two full-time interpreters shall be hired to adequately serve the large populations speaking Portuguese and Cape Verdean on the one hand, and Spanish on the other.

    f. The AT&T language line shall be utilized only in the last resort when no interpreters are available. A simple protocal to help Hospital staff access the line shall be developed.

    g. Training on medical interpretation by the Bristol Community College shall be provided periodically to volunteer interpreters. Other training sessions on cultural diversity and competency shall also be frequently organized for Hospital staff.

h. Publicity regarding the availability of the interpreter service within the Hospital and in the community. Community input shall be sought for the development of the service.

A plan for interpreter services development shall be submitted to the Director of the DoN Program and the Director of the Office of Refugee and Immigrant Health within 120 days of DoN approval. Progress reports shall be submitted yearly on the anniversary date of the DoN approval.

6. Prior to initiation of the service, the applicant shall secure price quotes from at least three manufacturers of radiation therapy equipment.

7. Prior to initiation of the service, the applicant shall submit evidence of compliance with all applicable standards of safety and operation imposed by law.

8. The applicant shall not begin construction until it has received written, final approval of its plans from the Department's Division of Health Care Quality.

9. The applicant shall provide $450,000 (April 1994 dollars) over a five-year period for community health services. The specific service initiatives and associated funding are described below. Funding for these initiatives will begin upon project implementation.

1. Good Samaritan, Morton, and St. Anne's shall each contribute $50,000 to the Massachusetts Poison Control Center to assist the Center in maintaining its toll-free twenty-four hour a day phone line for poisoning emergencies and poison information.

2. Good Samaritan, Morton, and St. Anne's will jointly hire 1 FTE case manager/cancer education coordinator at a total cost of $150,000 over five years. The FTE will be bilingual in Portuguese and available to radiation therapy patients and their families at both the Taunton and Fall River sites. The applicant has agreed to these conditions.

Three Ten Taxpayer Groups (TTGs), the Dorothy Allen, Bridgewater, and Brockton TTGs, registered in connection with the proposed project, but did not submit written comments within the specified comment period of thirty days as required by the DoN Regulations. The Brockton TTG originally requested a public hearing, but withdrew its request on September 28, 1994.

COMPLIANCE MEMORANDUM:

PREVIOUSLY APPROVED PROJECT APPLICATION NO. 5-2782 OF BROCKTON HOSPITAL – REQUEST FOR TRANSFER OF SITE OF A LICENSED 6 MV LINEAR ACCELERATOR FROM BROCKTON HOSPITAL AT 680 CENTER STREET, BROCKTON, MA TO A PROPOSED SITE ON BAY STREET IN TAUNTON NEAR THE INTERSECTION OF INTERSTATE HIGHWAY 495, MA (DOCKET ITEM 6 OF JANUARY 1999):

Ms. Joyce James, Director, Determination of Need Program, presented for Public Health Council's action the request by Brockton Hospital for the transfer of site of a licensed 6 MeV linear accelerator (previously approved DoN Project Number 5-2782) from Brockton Hospital's campus at 680 Center Street, Brockton, MA to a proposed site on Bay Street near the intersection of Interstate Highway 495 in Taunton, MA. Comments objecting to the proposed transfer of site were received by the Department within the 20 day period of the filing of the transfer of site. Consistent with DoN Regulations 105 CMR 100.720 (F), Public Health Council action is necessary. Brockton Hospital states that the transfer of site will make radiation therapy services more accessible to its current service area population residing in the city of Taunton and surrounding communities of Middleboro, Wakefield, Raynham, Berkley, Dighton and Norton. Brockton asserts that residents from these cities and towns must now travel to Brockton hospital for treatment where the actual travel time sometimes exceeds the thirty minutes maximum standard specified by the December 17, 1991 and May 25, 1993 updated Determination of Need Guidlelines for Megavoltage Radiation

Therapy Services ("Guidelines"). Brockton contends that with a 1990 census population of 49,832, the city of Taunton is centrally located within its service area and is therefore a suitable site for the radiation therapy service. Another reason given by Brockton for the transfer of site is that is will ensure full utilization of its two radiation therapy units. Brockton contends that the recent DoN approvals of two radiation therapy services, Jordan Hospital ("Jordan") in Plymouth and South Suburban Oncology Center ("South Suburban") in Quincy, have resulted in reduced service volume. (The projects were approved, respectively, August 25, 1992 and November 11, 1993). Brockton argues that the Guidelines' recommended statewide planning area for radiation therapy service allows it considerable latitude in selecting a community for the transferred megavoltage unit within HSA V boundaries. Brockton contends that since its radiation therapy services are currently used by residents of the city of Taunton and its surrounding communities, transfer of one of its units to one of these communities would not constitute a change in the current service area or the population served. Brockton states that the proposed 3,070 net square feet (NSF) located in a 5,065 gross square feet (GSF) building, which Brockton proposes to construct on property it will acquire, will accommodate the unit as well as space for patient care, administrative and support services. Brockton notes that the 3,070 NSF is within the Guidelines range of 2,500 to 4,800 NSF for a single MeV unit. Brockton further states that there will be neither a simulation room nor a treatment planning room in the new facility and patients will be required to travel to the Brockton Hospital site for simulation and treatment planning."

Mr. Norman Goodman, President, Brockton Hospital, said in part, "…We want to thank staff for their hard work on our application to transfer one of our radiation therapy units to the Taunton area, and are pleased that the staff is recommending approval of our application. We believe it is a sound application, and will allow us to offer better service to a population which has been increasingly coming to us for radiation therapy. In fact, the use of our units by residents of the City of Taunton, and the surrounding towns of Middleboro, Wakefield, Raynham, Berkley, Dighton and Norton has grown more than fifty percent from fiscal "94 to '97. By fiscal '97, thirteen percent of all patients receiving radiation therapy services at Brockton Hospital came from the Taunton area. And for these towns, the dependency on Brockton Hospital'service was significant. For example, forty percent of new cancer patients needing radiation therapy services in Wakefield received their treatment at Brockton Hospital…We have historically provided radiation therapy and other service to the Greater Taunton area. We believe that relocating one of our radiation therapy units to this area will allow us to serve this population even better. We hope you will support the staff's recommendation for approval of the transfer of one of our units to the Taunton area."

After consideration, upon motion made and duly seconded, it was voted: [Chairman Koh in favor, Council Members: Slemenda, Phelps, Askinazi, Sherman, Sneider, George, Jr., Sterne in favor; Council Member Yaffe abstaining] **to approve Previously approved Project Application No. 5-2782 of Brockton Hospital – Request for transfer of site of a licensed 6 MV linear accelerator from Brockton Hospital at 680 Center Street, Brockton, MA to a proposed site on Bay Street in Taunton near the intersection of Interstate Highway 495, MA (Docket Item 6 of January 1999).** A summary is attached to and made a part of this record as **Exhibit Number 14,650**.

The meeting adjourned at approximately 12:35 p.m.

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Chairman Howard K. Koh, M.D.
Public Health Council